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HEMDAT YAMIM

Parashat HaShavua

Shemini, 23 Adar II 5776

Intellect, Logic, Particles, and a Cat

Harav Yosef Carmel

This week the *maftir* is the section on the *Para Aduma* (Red Heifer). It is a good time to look at the place of logic and human intellect as a central part of our belief as Jews, and how the *Para Aduma* fits into the fabric of the *mitzvot* in this regard.

Our Rabbis discussed why this week was chosen as the time to read about *Para Aduma*. Some say that it is related to the fact that the month of Nisan is approaching, as the *Para Aduma* is needed to prepare people for partaking in the *Korban Pesach*. (Interestingly, both of them are called a *chuka*, which we usually translate as a *mitzva* whose reasoning is unknown to us). Indeed, in the desert, they burnt a slaughtered *Para Aduma* soon before the month of Nisan, in order to sprinkle its ashes on Bnei Yisrael right after the *Mishkan* was erected. Some explain that it has to do with our hope for ultimate redemption, which, sources indicate, will occur in Nisan, as the *Para Aduma* will return to use at that time.

We will try to explain the matter slightly differently. Rashi (based on a *midrash*) explains the opening of *Parashat Para*, "This the *chuka* of the Torah" (Bamidbar 19:2), as follows: "Because the Satan and the nations of the world scoff at Israel, saying: 'What is this *mitzva*, and what reasoning does it have behind it?' Therefore, it says that it is a *chuka*. It is a decree from before Me, and you do not have permission to cast aspersions on it." Rashi's words teach us two principles.

Mitzvot have to pass the "test of common sense and logic." Since all of our actions have to be based on the rules of clear logic, the *mitzvot*, which are the basis of our lives, also have to meet these standards. To the extent that we do not conform to this rule, we will be allowing the Satan and the nations of the world to have claims against us.

Within the apparatus of *mitzvot* that conform to this idea of logic, there are a small number of *mitzvot* that are exceptions that are identified as *chukim*. If the exceptions turned into the rule, then Torah Judaism would turn into something distant from us. If one felt such was the situation, he would be susceptible to the arguments of the Satan. It is upon this backdrop that the *midrash* tells how even Moshe questioned Hashem about the logic of ashes purifying, until Hashem assured him that this is a *chuka* (Psikta D'Rav Kahane 4).

We all try to purify and improve our way of thinking, our actions and the status of our nation. We must always take steps in a manner that is measured, based on logic, and it is strictly forbidden to act irrationally, certainly not in a way that endangers oneself or the welfare of the nation. On the other hand, we must remember that not always will things be fully understood. There will be things that exceed human intellect.

We can illustrate this idea with the natural sciences, which, on the one hand, are explored with the idea that theories are to be analyzed and exposed to experimentation. Yet, one of the important ideas in particle physics is the principle of uncertainty. Let us express that in a different way. We will never know the answer to the paradox as to whether Schrodinger's cat is alive or dead.

As Nisan and the season of liberation approaches, we need to know that our steps toward full liberation should be taken logically. Even though we have experienced miracles, such as the very establishment of the State of Israel, miracles are the exception. We should proceed in a manner that does not give the nations of the world unnecessary ammunition to attack our actions.

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Ask the Rabbi

by Rav Daniel Mann

Kohen and Others Joining for a *Minyan* “In” a Cemetery

Question: I was in a cemetery with several people (nine men) at different graves. Someone wanted to make a *Kaddish*, and a woman said her husband, a *kohen* standing on a path 50 meters away beyond a 2 ft. wall, would recite it (loudly). Were we right in doing such a *Kaddish*, considering he was forbidden to come to us?


Answer: Most of the *halachot* of *tziruf* (joining together) for a *minyan* involve people in adjoining rooms or courtyards or some people being inside and some outside. There the main factor is whether they are in the same domain (see Shulchan Aruch, Orach Chayim 55:13, *ibid.* 18), although other factors can cause *tziruf* (see *ibid.* 14, 15).

Regarding the *tziruf* for *zimun* in *Birkat Hamazon*, visual contact between the people connects them even if they are in different domains (Shulchan Aruch, OC 195:1). A major question is whether visual contact combines people for the apparently stricter matter of a *minyan* for *tefilla*, as well. The Rashba (Shut I:96) was asked why a *chazan* standing on a *bima* that is a halachically separate domain joins up with the others. He gives two answers: 1. A *bima* is made to serve as an integral part of the *shul*; 2. If some people in one domain see people in the other one, they constitute one unit. The Shulchan Aruch (OC 55:19) cites only the Rashba's first answer as halacha regarding *tziruf* for a *minyan*. There is a major *machloket* among *Acharonim* whether one can also rely upon visual contact for *tefilla* (see Sha'arei Teshuva 55:15). The Mishna Berura (55:48, 52) cites both opinions and seems to prefer the lenient one. The Kaf Hachayim (*ad loc.* 70) accepts the stringent opinion.

What should be the determining factor when all the people are outside? Mishneh Sachir (I:12) and Minchat Yitzchak (II:44) say that if they can see and hear each other, this creates *tziruf*. These conditions were fulfilled in your case. However, you likely failed another condition. The Shulchan Aruch (OC 195:1) cites an opinion that a public path that separates between the parts of the group prevents *tziruf* for *zimun*, even if they see each other and/or are served by a common waiter (Mishna Berura 195:8). The Taz (195:2) says that even a minor private path separates. (See Teshuvot V'hanhagot I:163 for an extremely strict approach on what is considered a path, but even assuming we reject it, it is unclear what the cut-off point is). You do not describe, other than the insignificant low wall, what was in between your group and the *kohen*, but it is likely that within 50 meters in a cemetery there are pathways, and the Mishneh Sachir and Minchat Yitzchak say this prevents *tziruf*.

We can suggest that if the cemetery is fenced in, internal minor paths do not separate people. There is also logic to accept lenient opinions in our context. For one, it is emotionally important for people to be able to say *Kaddish* for their loved ones. Secondly, a possibly unauthorized *Kaddish* is not comparable to a possibly unauthorized *beracha* (*l'vatala*). A *beracha l'vatala* includes saying Hashem's name improperly, which is either a Torah-level or at least a serious Rabbinic violation (see Tosafot, Rosh Hashana 33a). In contrast, we find *poskim* who say that one can be lenient in questionable cases of *Kaddish* (see Mahrashag II:40, regarding leniency to count a child as a tenth person for a *minyan* for *Kaddish*.)

The fact that the *kohen* was forbidden to come to where the majority of you were standing is not an issue. First, we are unaware of a source that a problem exists in this context. We do find a parallel application of your logic. If three people eat together in a manner that each may not, for halachic reasons, eat from the other's food, there is no *tziruf* for *zimun* (Shulchan Aruch, OC 196:3). However, it is enough that Reuven can eat from Shimon's food, even if Shimon cannot eat from Reuven's. In your case, you could have gone to where the *kohen* is. Actually, you probably should have gone to where the *kohen* was, as *Kaddish* does not have to be said right next to the grave of the deceased you want credited.



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Ein Ayah

(from the writings of Harav Avraham Yitzchak Hakohen Kook, z.t.l.)

Keys for the Inner and the Outer Doors

(condensed from Ein Ayah, Shabbat 2:169)

Gemara: Rabba bar Rav Huna said: Whichever person has Torah but does not have within him fear of Heaven is like a treasurer to whom they handed over the keys to the inner doors, but the keys to the outer doors they did not hand over. How will he be able to get in?

Ein Ayah: The *sechel* (intellect) and the *regesh* (feelings/emotions) are the controllers of the spirit. These enable a person to, respectively, investigate every matter with logic and draw him to feel good about doing that which is upright. Pure *sechel* is certainly more refined and internal than *regesh*, which is affected by the nature of the body.

The pure divine *sechel* is the foundation of the Torah, and a person can embrace it when he studies Torah for the right reasons and with great effort. The foundation of fear of Hashem is pure *regesh* in the correct direction, in which one's moral spirit and his good actions join together to prepare the heart for a life of sanctity. Proper *regesh* is called "fear of Heaven" when it is enhanced by awe that inspires a person who contemplates the wonders of nature done by the Creator, as the *pasuk* says: "When I see Your heavens, the work of Your fingers" (Tehillim 8:4).

The inner *regesh* reacts enthusiastically when it sees the *sechel* finding deep truths even of cold and dry logical statements. The finely tuned holy heart "hears" the result of the pure *sechel* in a unique way. Therefore, one who lacks pure *regesh*, even though it is external in comparison to pure *sechel*, will not be able to grasp and feel the truths involved in grasping elements of Hashem. He may have intellectual command of the philosophical ideas, but he will not reach their inner essence. This is because truths have their full significance only when they reach the person at his inner point and his spirit clings to the light of life. For this to happen in more than a superficial manner and for it to allow a person control of the power, one's *regesh* needs to reach a level of sanctity and purity. Otherwise, his relationship with the truth will be theoretical and not practical.

This is what the *gemara* means by "How will he be able to get in?" Personal characteristics, even though they are external matters, determine whether a person will have his *sechel* light up the interior of his soul. This is because when they are improper, they separate between the *sechel* and the inner soul.

That is why one who has Torah, which is the pinnacle of the *sechel*, is lacking when he is missing fear of Heaven. He is like a treasurer, as he is not the owner of the intellectual attainments but one who theoretically has access to them, while they are actually foreign to him.

The situation would still be relatively good if he had actual access, in that they could impact the way he acts, even if they could not destroy the evil in his heart. However, since he is like one who has keys to the inner doors but not the outer ones, he is not able to use them at all. It is true that he will be able to do some impressive things, as is hinted by the metaphor of having received keys at all, as any type of Torah attainments makes an impression. However, they will not be able to do what they are supposed to. That is because inner morality is needed to grasp the inner element of the intellectual truths. These are the external keys that the person is missing.

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Returning a Loan That Might Have Had Heter Iska – Part II

(excerpts from ruling 74087 of the Eretz Hemdah-Gazit Rabbinical Courts)

Case: The plaintiff (=pl) lent \$200,000 to the defendants (=def) at 12% interest annually so that they could invest it in a commercial project in the US, as spelled out in a loan agreement. For two years, def made interest payments. The project is stalled, and def have financial difficulties. Pl wants to receive the remaining interest and cancel the loan and receive the principal. Def #1 claims that the loan is payable only when they sell the business they invested in but admits that they will then have to pay in full. Def #2 argues that no heter iska was signed (although it had been planned), and it is therefore forbidden to pay interest. He is also willing to swear that the investment produced losses, in which case, the laws of iska dictate that they do not have to pay in full. That which was already paid should count as principal and subtracted from the \$200,000. Pl says that there was a heter iska, even though he does not find it, and that this loan was to be paid even if the main enterprise sustained losses.

Ruling: [Last time we saw that the monthly payment was for profits and was not payment of principal and that even without producing a heter iska, we can assume one existed].

According to classic heter iska documents, payment of the profits depends on the assumption of significant profits and payment of half of the principal depends on the assumption there have not been losses. In this case, both sides agree that the project mentioned in the loan agreement is presently not profitable. Poskim rule (see Brit Yehuda 38:(6)) that if appraisers agree that, for example, real estate bought with the investment money did not rise in value, the recipient is exempt from paying and swearing that there was no gain and that he was not negligent. This is assuming the heter iska refers to a specific investment. Some heterei iska state that if the main investment is not profitable, the recipient transfers rights to other properties of the investor, making it rarely feasible that he is exempt from the payment of the estimated profit.

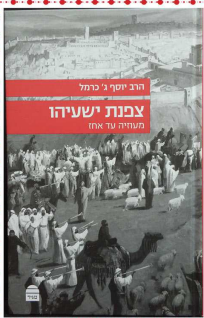
In this case, we assumed there was a heter iska document even though it was not presented. However, we have no reason to assume that the heter iska was done in a manner that strengthens pl's rights. Even if we assume (see Maharsham II:216) that a heter iska creates a lien on all of the recipients' property, that does not mean that the profits are linked to them all. This is especially true in a case like this, where the loan agreement links the investment to a specific property.

Many contemporary heterei iska are based on the Chochmat Adam's model, by whose terms the investment is renewed on a monthly basis, and silence is considered admission of profits. In a case like ours, where there were monthly installment payments of profits, it is more likely to view them as an admission of profit. (Admittedly, it is possible that he paid them as only down payments on the assumption of a future determination of profit).

Based on the uncertainty as to the arrangement between the sides, beit din rules that def should return all of the principal. Regarding interest, def should not pay any more but may not subtract that which was already paid from the full principal due.

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